

EASTERN DISTRICT OF OKLAHOMA

Plaintiff,

No. CIV 24-262-RAW-GLJ

Defendant.

OPINION AND ORDER

Screening/Dismissal Standards

The pleading standard for all civil actions was articulated in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). *See Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009). To avoid dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6), a complaint must present factual allegations, assumed to be true, that “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. The

complaint also must contain “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. A court must accept all the well-pleaded allegations of the complaint as true, even if doubtful in fact, and must construe the allegations in the light most favorable to the plaintiff. *Id.* at 555-56. “So, when the allegations in a complaint, however true, could not raise a claim of entitlement to relief,” the cause of action should be dismissed. *Id.* at 558. The Court applies the same standard of review for dismissals under 28 U.S.C. § 1915(e)(2)(B)(ii) that is employed for Fed. R. Civ. P. 12(b)(6) motions to dismiss for failure to state a claim. *Kay v. Bemis*, 500 F.3d 1214, 1217-18 (10th Cir. 2007). *See also Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013) (holding that § 1915A dismissals are reviewed under the Fed. R. Civ. P. 12(b)(6) standard for stating a claim for relief).

A pro se plaintiff’s complaint must be broadly construed under this standard. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The generous construction given to the pro se litigant’s allegations, however, “does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Notwithstanding a pro se plaintiff’s various mistakes or misunderstandings of legal doctrines or procedural requirements, “if a court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so” *Id.* A reviewing court need not accept “mere conclusions characterizing pleaded facts.” *Bryson v. City of Edmond*, 905 F.2d 1386, 1390 (10th Cir. 1990). “While a complaint . . . does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (quotations and citations omitted). The Court “will not supply additional factual allegations to round out a plaintiff’s complaint or construct

a legal theory on a plaintiff's behalf." *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997).

Plaintiff's Claim

Plaintiff states in his complaint that his federal constitutional or federal statutory rights were violated under "CH 73 T 18 §§ 1505, 1512, 242, 241." (Dkt. 1 at 5). He shows nothing to explain which rights he is referencing or how the defendants' actions were unconstitutional.

Plaintiff alleges that after he filed an earlier civil rights complaint in this Court's Case No. CIV 24-060-RAW-JAR, Defendants Ledbetter and Smith repeatedly have attempted to hinder and obstruct his civil proceedings. Plaintiff contends Ledbetter and Smith have effectively deprived him of his rights in the legal process by withholding sensitive documents, such as his inmate account statement. Defendant Smith also has denied Plaintiff's grievances and his request regarding an account statement. *Id.* at 5-6. Plaintiff presents no specific factual allegations against Defendant Ledbetter or the McIntosh County Board of County Commissioners.

In support of his claim, Plaintiff has filed a "motion to submit evidences," which the Court construes as a supplement to the complaint. (Dkt. 8). He asserts the defendants were informed of the Court's August 12, 2024, Order Granting Leave to Proceed *In Forma Pauperis*, which ordered that an initial partial filing fee of \$7.47 be paid by September 1, 2024. *Id.* at 1, 4-5. The Court's records indicate that \$8.00 was received by the Court on September 9, 2024. *See* Docket Sheet for Case No. CIV 24-262-RAW-GLJ. Plaintiff apparently is asserting that this case was delayed when the fee was not paid by the Court's deadline. *Id.* at 2.

Discussion

Here, Plaintiff is complaining that Defendant Smith delayed paying the initial partial filing

fee. Defendant Smith, however, explained in her August 20, 2024, response to Plaintiff's Request to Staff that Plaintiff's account was empty when the *in forma pauperis* order in this case was received by the jail. *Id.* at 6. The Court finds Plaintiff has failed to show his constitutional rights were violated. The Court further finds that Plaintiff's complaint is frivolous and fails to state to state a claim upon which relief may be granted. *See* 28 U.S.C. 1915A; 28 U.S.C. § 1915(e)(2)(B). Therefore, this action is dismissed.

ACCORDINGLY,

1. Plaintiff's "motion to submit evidences" (Dkt. 8) is construed as a supplement to the complaint.
2. This action is dismissed as frivolous and for failure to state a claim upon which relief may be granted.
3. This dismissal shall count as a "prior occasion" or "strike," pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED this 19th day of November 2024.



RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA